

SEP 15 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FIDEL CISNEROS-GONZALEZ,

Defendant - Appellant.

No. 05-30599

D.C. No. CR-05-00136-JLQ

MEMORANDUM^{*}

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FIDEL CISNEROS-GONZALEZ,

Defendant - Appellant.

No. 06-30000

D.C. No. CR-05-00064-JLQ

Appeal from the United States District Court
for the Eastern District of Washington
Justin L. Quackenbush, Senior District Judge, Presiding

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Submitted September 11, 2006**

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

In these consolidated appeals, Fidel Cisneros-Gonzalez appeals from his 30-month sentence, imposed following his guilty plea to being an alien found in the United States after deportation, in violation of 8 U.S.C. § 1326, and from his consecutive 21-month sentence, imposed following revocation of supervised release. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Cisneros-Gonzalez contends that pursuant to *Dretke v. Haley*, 541 U.S. 386 (2004), the doctrine of avoidance of constitutional doubt requires that 8 U.S.C. § 1326 be construed such that the fact of removal subsequent to prior conviction must be admitted by the defendant or determined by a jury beyond a reasonable doubt. This Court, however, has rejected the contention that the temporal relationship between removal and a prior conviction is beyond the scope of the recidivism exception announced in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). *See United States v. Castillo-Rivera*, 244 F.3d 1020, 1025 (9th Cir. 2001). Therefore, the doctrine of avoidance of constitutional doubt does not require § 1326 to be construed otherwise. Likewise, Cisneros-Gonzalez's

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

contentions that *Almendarez-Torres* has been overruled, or can be otherwise distinguished, are foreclosed by *United States v. Beng-Salazar*, 452 F.3d 1088, 1091 (9th Cir. 2006).

Cisneros-Gonzalez also contends that imposition of consecutive sentences was unreasonable under *United States v. Booker*, 543 U.S. 220 (2005), on the grounds that the district court mistakenly concluded that consecutive sentences were mandatory, and failed to consider whether imposition of consecutive sentences resulted in a term of imprisonment sufficient but not greater than necessary to comply with the relevant purposes set forth by 18 U.S.C. § 3553(a). The record reflects, however, that the district court was aware that it had discretion to impose a concurrent sentence, and properly considered factors set forth by 18 U.S.C. § 3553(a). We conclude that the sentences, imposed within the Guidelines ranges, are not unreasonable under *Booker*, see *United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 771 (9th Cir. 2006), and the judgments are **AFFIRMED**.